

See 10319

United States

Circuit Court of Appeals

For the Ninth Circuit.

VIRGINIA DAVIS HARTMAN and MAR-
GARET DAVIS RICHARDSON,

Appellant,

vs.

BANK OF AMERICA NATIONAL TRUST &
SAVINGS ASSOCIATION,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.

FILED

DEC - 9 1941

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States in
and for the Northern District of California,
Southern Division.

VIRGINIA DAVIS HARTMAN and
MARGARET DAVIS RICHARDSON,
Plaintiffs,

vs.

HAROLD F. DAVIS, ARTHUR A. DOLE,
STEWART ESTATE COMPANY, a corpora-
tion, C. F. HUMPHREY, SAMUEL PLATT,
JOHN S. SINAI, SIERRA CONSOLI-
DATED MINES, INC., a corporation, BANK
OF AMERICA NATIONAL TRUST & SAV-
INGS ASSOCIATION, a national banking
association, LUTHER ELKINS, RICHARD
ROE, WILLIAM BLACK, MARY BOE,
JANE DOE and SUSAN VOE,
Defendants.

Civil No. 21021-R.

SECOND AMENDED COMPLAINT TO ESTABLISH A TRUST AND FOR AN ACCOUNTING

Now come Virginia Davis Hartman and Margaret Davis Richardson, the above named plaintiffs, and by leave of [1*] Court first had and obtained, file this their Second amended complaint herein, and in this their first count and separate cause of action, for cause of action allege:

I.

That the defendant Stewart Estate Company is now and during all of the times herein mentioned was a corporation.

II.

That the defendant Sierra Consolidated Mines Inc., is now and during all of the times herein mentioned was a corporation.

III.

That the true name and identity of the defendant John Doe, is Luther Elkins. That the defendants, Richard Roe, William Black, Mary Boe, Jane Doe and Susan Voe are fictitious defendants, the true names of whom are unknown to the plaintiffs, and said plaintiffs pray in this respect that when said true names be ascertained they be by permission of this Honorable Court permitted to substitute said true names for said fictitious names.

*Page numbering appearing at foot of page of original certified Transcript of Record.

IV.

That the defendant, Bank of America National Trust and Savings Association is now and during all of the times mentioned in this complaint, was a national banking corporation organized and existing under and by virtue of the laws of the United States of America.

V.

That Martina Maxine Dole died in the County of San Mateo, State of California, on or about the 3rd day of February, 1934; that the said Martina Maxine Dole was at the time of her said death a resident of said County of San Mateo, State aforesaid, and left an estate therein consisting of both real and personal property. That the said Martina Maxine Dole died intestate, that is to say, that the said Martina Maxine Dole failed to [2] leave surviving her any valid last will and testament disposing of such property that she died possessed of. That the said Martina Maxine Dole left surviving her as her sole heirs at law your plaintiff, Virginia Davis Hartman, a sister of said deceased, your plaintiff, Margaret Davis Richardson, a sister of said deceased, the defendant Harold F. Davis, a brother of said deceased, and the defendant Arthur A. Dole, the surviving husband of said deceased.

VI.

That subsequent to the death of the said Martina Maxine Dole, deceased, there was filed in the Superior Court of the State of California, in and for the County of San Mateo, a petition for Letters

of Administration, numbered therein 6432 probate; that subsequent thereto and after due and proper proceedings had pursuant to the law and the statute in such instances made and provided for, to-wit on or about the 11th day of June, 1934, the said last named Court by an order duly given and made appointed the defendant, Bank of America National Trust & Savings Association, a national banking corporation as administrator of the said estate of the said Martina Maxine Dole, deceased; that the said defendant Bank of America National Trust & Savings Association, a national banking corporation, thereupon immediately qualified and letters of Administration were issued to it by the Clerk of said last named Court over the seal thereof, that thereafter and after due and proper proceedings had pursuant to the statute in such instances made and provided for, and on or about the 30th day of November, 1936, the said last named Court by an order duly given and made, decreed distribution to the said heirs at law of the said Martina Maxine Dole, deceased, and in said decree of distribution said last named Court adjudicated that the said plaintiff, Virginia Davis Hartman, was a sister of said deceased, and as such entitled to [3] an undivided one-sixth interest in all property belonging to said deceased and likewise in all property not known or discovered at said time, and that the said Court further decreed that the said defendant, Harold F. Davis, was a brother of said deceased, and as such entitled to an undivided one-sixth interest in all property belonging to said deceased and

likewise in all property not known or discovered at said time, and that said Court further decreed that the said defendant Arthur A. Dole was the surviving husband of said deceased, and as such entitled to an undivided one-half interest in all property belonging to said deceased and likewise in all property not known or discovered at said time, and that said property was distributed to said last named persons in accordance with the ratio and proportion of their respective ownership in and to said property belonging to said deceased, as aforesaid.

VII.

That plaintiffs are informed and believe and upon such information and belief allege that the defendants, Stewart Estate Company, a corporation, and C. F. Humphrey, claim some right, title, interest in or lien upon the share and portion of the said property of said deceased distributed to and belonging to the defendant Arthur A. Dole by reason of certain instruments, conveyances or assignments executed by the said defendant Arthur A. Dole to the said defendants Stewart Estate Company, a corporation, and/or the defendant, C. F. Humphrey.

[4]

VIII.

That the said plaintiffs are informed and believe and upon such information and belief allege that the defendants, Richard Roe, William Black, Mary Boe, Jane Doe and Susan Voe claim some right, title, interest in or lien upon the said property left by said deceased, Martina Maxine Dole, but in this

respect said plaintiffs allege that said claim or claims on behalf of said last named defendants are without merit and in any event subordinate to the claims of the said plaintiffs in and to their said respective shares of the said property belonging to the said deceased, Martina Maxine Dole, as aforesaid.

IX.

That plaintiffs are informed and believe and upon such information and belief allege that at all times mentioned in this complaint the defendants Samuel Platt and John S. Sinai were and are now attorneys-at-law engaged in the general practice of the profession of law as co-partners in the City of Reno, State of Nevada, under the firm name and style of Platt and Sinai.

X.

That the defendants C. F. Humphrey and Luther Elkins are now and during all of the times mentioned in this complaint, were attorneys-at-law duly licensed as such under the laws of the State of California. That the said defendants C. F. Humphrey and Luther Elkins were the attorneys of record for, and represented the Bank of America, a national banking [5] corporation, as special administrator of the Estate of Martina Maxine Dole, deceased. That the said defendants C. F. Humphrey and Luther Elkins also were the attorneys for and represented the defendant Arthur A. Dole and the plaintiffs Virginia Davis Hartman and Margaret Davis Richardson, heirs of the said Martina Maxine

Dole in the matter of the estate of the said Martina Maxine Dole to the extent as will hereinafter be more specifically referred to and alleged.

XI.

That plaintiffs are informed and believe and upon such information and belief allege that at the time of the death of the said Martina Maxine Dole, deceased, the said defendants Samuel Platt and John S. Sinai were, and for a long time prior thereto had been the attorneys and counsellors-at-law for the said Martina Maxine Dole; that by reason of said relationship of attorney and client between the said defendants Samuel Platt and John S. Sinai, and the said Martina Maxine Dole, deceased, a relationship of trust and confidence existed between the said last named defendants and the said Martina Maxine Dole, deceased, at the time of the death of the said Martina Maxine Dole, deceased, and for more than eighteen months prior thereto.

XII.

That plaintiffs are informed and believe and upon such information and belief allege that on or about the 11th day [6] of May, 1933, the said defendant, John S. Sinai, on behalf of himself and his said partner, the said defendant Samuel Platt, notified the said Martina Maxine Dole and her then husband, the said defendant Arthur A. Dole, substantially as follows, to-wit:

(a) That Silverado and Kentuck mining property situate in Mono County, State of California,

some twenty miles northerly from the town of Bridgeport in said County, and consisting of several lode claims, together with a hydro-electric power plant and power line, a mill, machinery, tools equipment, buildings, water rights and other property, was advertised for sale and would be sold at a Receiver's sale thereof on or about the 20th day of May, 1933;

(b) That the machinery pertaining to said mining property and constituting a part of said property to be sold had cost in excess of Three Hundred thousand (\$300,000.00) Dollars in cash and was then in good condition;

(c) That he, the said defendant, John S. Sinai, had conferred with his friend, one D. C. McKay, the aforesaid Receiver, who would make the aforesaid sale, and that he, the said defendant, John S. Sinai, was led to believe from such conferences and conversations with the said D. C. McKay that by reason of the said prevailing money stringency and consequent lack of available buyers, all of said mining property would be sold at said sale thereof for approximately Eighteen thousand five hundred (\$18,500.00) Dollars;

(d) That the said defendant John S. Sinai recommended most strongly that the said Martina Maxine Dole should permit said defendant John S. Sinai and the said defendant Samuel Platt to put in a bid at said Receiver's sale for and on behalf of the said Martina Maxine Dole and that said last named defendants be permitted by the said Martina Maxine Dole [7] as her representatives and attor-

neys to use their best endeavors to purchase all of the aforesaid property for the use and benefit of the said Martina Maxine Dole provided it could be purchased for a sum not to exceed Twenty-five thousand (\$25,000.00) Dollars.

(e) That the said defendant John S. Sinai requested that the said Martina Maxine Dole send to said last named defendant immediately the sum of Twenty-five hundred (\$2500.00) Dollars in cash to be used by him in paying a ten percent installment of the sale price of said property at the time of making said bid in the event that said bid of the said defendants Samuel Platt and John S. Sinai for and on behalf of the said Martina Maxine Dole was accepted and if the said last named defendants should be the successful bidders for said property at said sale; that the said defendant John S. Sinai in this respect stated to the said Martina Maxine Dole that if the said sum of Twenty-five hundred (\$2500.00) Dollars was sent to said last named defendant by the said Martina Maxine Dole for the purposes, as aforesaid, it would not be necessary for the said Martina Maxine Dole to send him any additional moneys with which to complete the purchase price of the said property as the said defendant John S. Sinai would be able to obtain the remaining nine-tenths of the sale price of the said property from a re-sale for the said Martina Maxine Dole of certain of the machinery or certain water rights which constituted part of the said mining property, as aforesaid.

XIII.

That plaintiffs are informed and believe and upon such information and belief allege that at the time of making the aforesaid representations to the said Martina Maxine Dole the said defendant John S. Sinai delivered to the said Martina [8] Maxine Dole an itemized inventory of the real and personal property above referred to, together with a printed notice of said Receiver's sale, together with a letter from the said D. C. McKay, the said Receiver who would make said sale, as aforesaid, addressed to the said defendant John S. Sinai, wherein the said D. C. McKay advised the said defendant John S. Sinai that the purchase of said property at the aforesaid Receiver's sale thereof would be a very fine investment for the said John S. Sinai or any friend or client of his as said machinery on said property alone could be readily sold within a short time after the sale for at least Thirty thousand (\$30,000.00) Dollars cash, which would be about ten percent of the original cost of the said machinery as aforesaid.

XIV.

That plaintiffs are informed and believe and upon such information and belief allege that at the time that the said defendant John S. Sinai counselled and advised the said Martina Maxine Dole, as aforesaid, to become a purchaser at said Receiver's sale and to permit the said defendants John S. Sinai and Samuel Platt to act for her as her agents and representatives in the purchase of the said property at said sale, as aforesaid, the said defendants John

S. Sinai and Samuel Platt knew that the said Martina Maxine Dole had a sum in excess of Twenty-five hundred (\$2500.00) Dollars in cash for an investment and was at said time looking for an investment in a gold or silver mine.

XV.

That plaintiffs are informed and believe and upon such information and belief allege that thereafter and between the 11th day of May and the 15th day of May in the year 1933, the said defendant John S. Sinai communicated with the said Martina Maxine Dole and her then husband, the said defendant Arthur A. Dole, by telephone between the office of the said defendants John S. Sinai and Samuel Platt situate in the said City of Reno, State of Nevada, as [9] aforesaid, and the residence of the said Martina Maxine Dole situate in the said County of San Mateo, State of California, and in said conversations the said defendant John S. Sinai discussed the advisability of purchasing the aforesaid mining property at the aforesaid approaching Receiver's sale, and that he, the said defendant John S. Sinai, repeatedly urged upon the said Martina Maxine Dole to authorize him and the said defendant Samuel Platt to purchase said property for her at said sale and to send the said defendant John S. Sinai the said sum of Twenty-five hundred (\$2500.00) Dollars for the use and purposes herein set forth in connection with said sale of said property; that on or about the 14th day of May, 1933, the said Martina Maxine Dole informed the said defendant

John S. Sinai that she had decided to accept his recommendation and advice regarding the making of said bid for said mining property at said Receiver's sale, and that she did thereupon authorize and direct the said defendants John S. Sinai and Samuel Platt to bid in said property for her at said Receiver's sale at a price not to exceed Twenty-five thousand (\$25,000.00) Dollars, and that the said Martina Maxine Dole did thereupon cause to be transmitted to the said defendants John S. Sinai and Samuel Platt the sum of Twenty-five hundred (\$2500.00) Dollars for the purpose and use hereinbefore set forth.

XVI.

That plaintiffs have been informed and believe and upon such information and belief allege that on or about the 20th day of May, 1933, the said mining property was offered for sale at said Receiver's sale thereof and at said sale the said defendants John S. Sinai and Samuel Platt appeared as the agents and trustees, attorneys and counsellors of the said Martina Maxine Dole and as such agents and trustees, attorneys and counsellors for the said Martina Maxine Dole, did enter a bid for the aforesaid [10] mining property in the sum of Eighteen thousand five hundred (\$18,500.00) Dollars, which bid was the highest and best bid made at said sale for said mining property and that said bid was thereafter accepted and confirmed and that the said defendants John S. Sinai and Samuel Platt as the agents, trustees, attorneys and counsellors for the

said Martina Maxine Dole did pay on account of the said purchase price of the said property the sum of Eighteen hundred fifty (\$1850.00) Dollars as the first installment payment required to be paid in cash on the said sale price thereof; that said bid for mining property and the said sale thereof was confirmed in the name of the said defendant John S. Sinai. In this respect, however, said plaintiffs allege on such information and belief that the said defendant John S. Sinai was not acting individually on his own behalf but as the agent, trustee, attorney and counsellor for the said Martina Maxine Dole.

XVII.

That thereafter and prior to the date of the final installment of the sale price of the said mining property so purchased by the said defendants John S. Sinai and Samuel Platt as the agents, trustees, attorneys and counsellors of the said Martina Maxine Dole, in the name of the said defendant John S. Sinai at said Receiver's sale, as aforesaid, the said defendants John S. Sinai and Samuel Platt, as plaintiffs are informed and believe and upon such information and belief allege said fact to be, in violation of the trust relation then existing between the said last named defendants and the said Martina Maxine Dole, as aforesaid, and in violation of the duty of said last named defendants as the agents, trustees, attorneys and counsellors of the said Martina Maxine Dole, to consummate the purchase [11] of said mining property for her account and to make the most favorable arrangement possible for

her for obtaining the additional Sixteen thousand six hundred fifty (\$16,650.00) Dollars more or less required to be paid as the final installment of the sale price of said mining property, and with intent to defraud the said Martina Maxine Dole out of any profit out of said investment of the said mining property other than the return of her said investment together with a profit thereon of Five hundred (\$500.00) Dollars, did the following:

(a) That the said defendants John S. Sinai and Samuel Platt entered into an agreement with one George G. Morse, a machinery man residing in the City of Denver, state of Colorado, under the terms of which the said George G. Morse agreed to advance the said defendant John S. Sinai the sum of Sixteen thousand six hundred fifty (\$16,650.00) Dollars with which to complete the payment of the sale price of the said mining property, all of which plaintiffs are informed and believe and upon such information and belief allege was never communicated to the said Martina Maxine Dole by either of the defendants John S. Sinai or Samuel Platt.

(b) That the said defendant John S. Sinai agreed to use the said money so obtained from the said George G. Morse to complete the payment of the sales price of the said property so sold at said Receiver's sale and to have said sale of said property confirmed to the said defendant John S. Sinai and that the said defendant John S. Sinai would then transfer, convey and deliver all of the said mining property so purchased in his name but as the agent, trustee, attorney and counsellor of the

said Martina Maxine Dole at said Receiver's sale, as aforesaid, to the defendant, Sierra Consolidated Mines, Inc., a corporation, in consideration of the issuance of [12] certain shares of stock of said corporation fully paid, which shares would be owned and shared between the said defendants John S. Sinai and Samuel Platt and the said George G. Morse in the proportion of one-half thereof by the said defendants John S. Sinai and Samuel Platt and the remaining one-half thereof by the said George G. Morse, and that as further consideration for such assignment, transfer and delivery of said mining property to said last named corporation, said corporation would agree to pay to the said defendants John S. Sinai and Samuel Platt the sum of Sixteen thousand six hundred fifty (\$16,650.00) Dollars approximately in cash, all of which plaintiffs are informed and believe and upon such information and belief allege was never communicated to the said Martina Maxine Dole by either of the defendants, John S. Sinai or Samuel Platt; and,

(c) That it was agreed between the said George G. Morse and said defendants John S. Sinai and Samuel Platt that the said defendants John S. Sinai and Samuel Platt should inform the said Martina Maxine Dole and her then husband, the said defendant Arthur A. Dole that after purchasing the said mining property at said Receiver's sale thereof for the use and benefit of the said Martina Maxine Dole, as aforesaid, and paying to the Receiver who had made such sale the aforesaid sum of Twenty-five hundred (\$2500.00) Dollars which

had been sent by the said Martina Maxine Dole to the said defendants John S. Sinai and Samuel Platt for said purchase, that said defendants John S. Sinai and Samuel Platt had been compelled to re-sell all of said mining property in order to obtain the money necessary to complete the payment of said sale price of said mining property and that for a time the said defendants John S. Sinai and Samuel Platt were fearful that they would not be able to make any [13] re-sale of any of said mining property and that the said Martina Maxine Dole would lose her investment of Twenty-five hundred (\$2500.00) Dollars and that the said defendants John S. Sinai and Samuel Platt had been forced and compelled to sell the aforesaid mining property in order to obtain from such sale the return of the aforesaid investment of Twenty-five hundred (\$2500.00) Dollars plus a profit of Five hundred (\$500.00) Dollars, and in this respect plaintiffs are informed and believe and upon such information and belief allege that the said defendants John S. Sinai and Samuel Platt did subsequently so inform the said Martina Maxine Dole.

XVIII.

That at the time the said George G. Morse entered into said contract with the said defendants John S. Sinai and Samuel Platt, as aforesaid, both the said George G. Morse and the said defendants John S. Sinai and Samuel Platt had notice and knowledge and were charged with notice and knowledge that the said defendant John S. Sinai had

made a bid for said mining property at said Receiver's sale and had been the successful bidder thereof as the agent, trustee, attorney and counsellor for the said Martina Maxine Dole and not otherwise and that all of the rights the said defendant John S. Sinai then had in and to the said mining property as the said successful bidder thereof at the said Receiver's sale were not in his own right but as the agent, trustee, attorney and counsellor for the said Martina Maxine Dole.

XIX.

That thereafter the said defendants John S. Sinai and Samuel Platt paid the remainder of the sale price of said mining property purchased by the said defendant John S. Sinai under the facts and circumstances hereinbefore alleged at said Receiver's sale, as aforesaid, with the money received [14] from the said George G. Morse under said agreement so entered into, as aforesaid, whereupon said sale thereof was confirmed to him by an order of Court duly made and entered and thereupon the said D. C. McKay, as said Receiver, conveyed the said mining property and the whole thereof to the said defendant John S. Sinai by a good and sufficient deed duly acknowledged so as to entitle the same to be recorded and delivered possession of the said mining property together with all equipment, incidentals and appurtenances thereunto belonging, to the said defendant John S. Sinai.

XX.

That plaintiffs are informed and believe and upon such information and belief allege that immediately after the conveyance and confirmation of said sale of said mining property to the said defendant John S. Sinai, as aforesaid, that the said John S. Sinai conveyed all of said mining property to the said defendant, Sierra Consolidated Mines, Inc., a corporation, by good and sufficient deed and bill of sale duly acknowledged so as to entitle the same to be recorded, and delivered possession of said mining property and all appurtenances thereunto belonging and the whole thereof to the said Sierra Consolidated Mines, Inc., a corporation; that at the time said conveyance of said mining property was made to the said Sierra Consolidated Mines, Inc., a corporation, said corporation was wholly controlled and dominated by the said defendants John S. Sinai, Samuel Platt and George G. Morse, and that at the time of the said conveyance of said mining property to said corporation and at all times since then the said Sierra Consolidated Mines, Inc., a corporation, and the Board of Directors thereof had notice and knowledge and were charged with notice and knowledge that said mining [15] property so sold, assigned and transferred by the said John S. Sinai to it was the property of Martina Maxine Dole and that the said defendant John S. Sinai merely held that the legal title thereof as the agent and trustee for the said Martina Maxine Dole and that the conveyance and delivery of said mining

property by the said defendant John S. Sinai to said corporation was made by said defendant John S. Sinai without authority and in violation of his obligations and duties as agent and trustee for the said Martina Maxine Dole and in fraud of the rights of the said Martina Maxine Dole.

XXI.

That plaintiffs are informed and believe and upon such information and belief allege that the mining property so purchased at the aforesaid Receiver's sale by the said defendants John S. Sinai and Samuel Platt, as the agents, trustees, attorneys and counsellors for the said Martina Maxine Dole, as aforesaid, is reasonably worth the sum of Three million (\$3,000,000) Dollars, and that since the acquisition by the said defendant Sierra Consolidated Mines Inc., a corporation, of said property, that the said defendants John S. Sinai and Samuel Platt have received dividends and attorneys fees and other moneys from the said defendant Sierra Consolidated Mines Inc., a corporation, from the said property so held by them, as aforesaid, in excess of Fifty thousand (\$50,000.00) Dollars; that all property obtained by the said defendants John S. Sinai and Samuel Platt, including all stock of the defendants Sierra Consolidated Mines, Inc., a corporation, all moneys received from said last named defendant, and all other moneys received as attorney's fees or otherwise, were in reality received by said defendants John S. Sinai and Samuel

[16] Platt and are now held by said defendant John S. Sinai and Samuel Platt as the agents, trustees, attorneys and counsellors of the said Martina Maxine Dole, deceased, and that by reason of the death of the aforesaid Martina Maxine Dole and of the said probate proceedings and of the heirship of said last named deceased, as aforesaid, all of the said last named property now held by the said defendants John S. Sinai and Samuel Platt is held, to-wit an undivided one-third interest thereof is property of the said plaintiffs, Virginia Davis Hartman and Margaret Davis Richardson.

XXII.

That the said plaintiff, Virginia Davis Hartman, is now and during all of the times mentioned in this complaint was a resident of the State of New York; that the said plaintiff, Margaret Davis Richardson, is now and during all of the times mentioned in this complaint was a resident of the State of New Jersey; that said plaintiffs were not during any of the times mentioned in this complaint residents of or residing either in the State of California or the State of Nevada, and that all of the aforesaid facts and circumstances alleged in this complaint were not known nor discovered by said plaintiffs or either of them until the year 1938, to-wit, that said facts and circumstances were not discovered by the said plaintiff Virginia Davis Hartman until on or about the 21st day of April, 1938, and by the said plaintiff Margaret Davis Richardson until on or about

the first day of July, 1938; that said plaintiffs did upon the said discovery of said facts and circumstances promptly cause said facts and circumstances to be investigated and did authorize and instruct the above entitled action to be commenced in their names and for and on their behalf. [17]

XXIII.

That subsequent to the death of the said Martina Maxine Dole on the 3rd day of February, 1934, and almost immediately thereafter, the said defendant Arthur A. Dole communicated with the said plaintiffs, Virginia Davis Hartman and Margaret Davis Richardson, sisters of the said Martina Maxine Dole, deceased, as aforesaid, advising the said plaintiffs of the death of their said sister, as aforesaid, and further advising the said plaintiffs of the fact that the said Martina Maxine Dole died intestate, and that under the laws of the State of California that they were heirs of the said Martina Maxine Dole, deceased, to the extent as hereinbefore more specifically mentioned and set forth. That the said defendant, Arthur A. Dole, further advised the said plaintiffs that there were certain matters involving the property of the said Martina Maxine Dole, deceased, that would require attention and likewise services of an attorney or attorneys at law to represent said heirs of the said Martina Maxine Dole, deceased, as aforesaid, and that he, the said defendant, Arthur A. Dole, had or was about to procure the services of the said defendant, C. F. Humphrey

and Luther Elkins to represent him as an heir at law of the said Martina Maxine Dole, deceased, and suggested that he, the defendant Arthur A. Dole, would be very glad to protect the interests of the said plaintiffs and to have said defendants, C. F. Humphrey and Luther Elkins, act as attorneys for all of the heirs at law, including said plaintiffs, of the said Martina Maxine Dole, deceased; that said suggestion met with the approval of said plaintiffs and said approval was communicated by them to the said defendant, Arthur A. Dole; that the said defendant Arthur A. Dole did not at said time or at any time subsequent thereto advise the said plaintiffs [18] specifically as to any of the property or other rights belonging to the said deceased, Martina Maxine Dole, and more particularly any or all of the facts or circumstances involved and existing between said Martina Maxine Dole, deceased, during her lifetime and the said defendants Samuel Platt and John S. Sinai concerning the purchase of the said mining property, all of which has been heretofore more specifically alleged and set forth.

XXIV.

That plaintiffs are informed and believe and upon such information and belief allege that the said defendant, Arthur A. Dole, subsequent to the death of the said Martina Maxine Dole, deceased, and subsequent to the aforesaid understanding had between him and the said plaintiffs, as aforesaid, consulted and hired the said defendants, C. F. Humphrey and

Luther Elkins as attorneys to represent the interests of the heirs at law of the said Martina Maxine Dole, deceased, and at said time the said defendant, Arthur A. Dole, thoroughly explained to the said defendants, C. F. Humphrey and Luther Elkins all of the facts and circumstances concerning the transaction had between the said Martina Maxine Dole, deceased, and the said defendants Samuel Platt and John S. Sinai concerning the said purchase of the said mining property as herein more specifically set forth and alleged; that the defendant Arthur A. Dole did enter into a written contract with the said defendants, C. F. Humphrey and Luther Elkins hiring the said last named defendants as attorneys in and about the matter of the alleged transaction had between the said Martina Maxine Dole, deceased, during her lifetime, and the said defendants, Samuel Platt and John S. Sinai, concerning the purchase of the said mining property, as aforesaid, and that the said defendant Arthur A. Dole did by said contract agree to pay to the said defendants C. F. Humphrey and Luther Elkins a sum equal to one-half of any and all moneys recovered from the said defendants, [19] Samuel Platt and John S. Sinai, for the reasons hereinbefore more specifically set forth; that said contract was made for the benefit of the said defendant, Arthur A. Dole, and the said plaintiffs, Virginia Davis Hartman and Margaret Davis Richardson; that several and many conferences were had between the said defendant, Arthur A. Dole, the said defendants C. F. Humphrey and

Luther Elkins, acting as attorneys for the heirs at law of the said Martina Maxine Dole, deceased, and as attorneys for the defendant, Bank of America National Trust and Savings Association, a national banking association, special administrator of the estate of the said Martina Maxine Dole, deceased, as aforesaid, and officers and officials of the said defendant, Bank of America National Trust and Savings Association, a national banking association, concerning the aforesaid transaction had between the said Martina Maxine Dole, deceased, during her lifetime, and the said defendants Samuel Platt and John S. Sinai, as hereinbefore more specifically alleged, and likewise the rights and remedies of the said estate of the said Martina Maxine Dole, deceased, and the heirs at law of the said Martina Maxine Dole, deceased; that as a result of said conversations had between the said defendants Arthur A. Dole, C. F. Humphrey, Luther Elkins, and Bank of America National Trust and Savings Association, a national banking association, its agents and officials, as aforesaid, the said defendants C. F. Humphrey and Luther Elkins advised that in their opinion a cause of action existed in favor of the heirs at law of the said Martina Maxine Dole, deceased, against the said defendants Samuel Platt and John S. Sinai in and about the matters hereinbefore more particularly alleged, as aforesaid; that thereafter the said defendant Bank of America National Trust and Savings [20] Association, a banking association, communicated with said defendants

Samuel Platt and John S. Sinai concerning the aforesaid alleged cause of action existing in favor of the heirs at law of the estate of said Martina Maxine Dole, deceased, as aforesaid, and against the said last named defendants, and as a result of said communications and subsequent conferences had between the defendants, John S. Sinai, Samuel Platt, and the officers and agents of the defendant Bank of America National Trust and Savings Association, a national banking association, it was agreed between said last named defendants that said cause of action should be compromised by the payment by the said defendant, John S. Sinai, to the said defendant Bank of America National Trust and Savings Association, a national banking association, as special administrator of the estate of Martina Maxine Dole, deceased, the sum of Five thousand (\$5000.00) Dollars.

XXV.

That plaintiffs are informed and believe and upon such information and belief allege that the said defendants, Arthur A. Dole, C. F. Humphrey, and Luther Elkins, upon being advised of the contemplated compromise by and between said defendant John S. Sinai and the said Bank of America National Trust and Savings Association, a national banking association, as aforesaid, strenuously objected to the said contemplated compromise; that the said defendant, Bank of America National Trust and Savings Association, a national banking asso-

ciation, its officials and agents, did thereupon inform the said defendants, C. F. Humphrey and Luther Elkins, that the said defendants, C. F. Humphrey and Luther Elkins were acting as the attorneys for the said defendant, Bank of America National Trust and Savings Association, a national banking association, as special administrator of the [21] estate of Martina Maxine Dole, deceased, and that said last named defendant was not asking the opinion of the said defendants, C. F. Humphrey and Luther Elkins, as to matters of policy, and that if they, the said defendants, C. F. Humphrey and Luther Elkins were unwilling to present to the Probate Court in which the said matters of the estate of said Martina Maxine Dole, deceased, was then pending, a petition for compromise as tentatively agreed, as aforesaid, that the said defendant Bank of America National Trust and Savings Association, a national banking association, would procure the services of other attorneys to represent it as special administrator in the matter of the said estate of Martina Maxine Dole, deceased.

XXVI.

That thereafter, to-wit, on or about the 7th day of May, 1936, the said defendant, C. F. Humphrey and Luther Elkins, as attorneys for the said defendant, Bank of America National Trust and Savings Association, a national banking association, the then duly acting and qualified special administrator of the said estate of Martina Maxine Dole,

deceased, as aforesaid, did prepare and cause to be filed for and on behalf of the said last named defendant, as said special administrator in the said matter of the estate of said Martina Maxine Dole, deceased, then pending in the Superior Court of the State of California, in and for the County of San Mateo, as aforesaid, a petition for authority to compromise the alleged indebtedness due from the said defendant, John S. Sinai, to the said heirs at law of the said Martina Maxine Dole, deceased, for the said sum of Five Thousand (\$5000.00) Dollars, and that thereafter the said Superior Court of the State of California, in and for the County of San Mateo, in the matter of the said estate of [22] Martina Maxine Dole, deceased, to-wit on or about the 25th day of May, 1936, did by an order approve the requested and suggested compromise by and between the said defendant, John S. Sinai, and the said defendant Bank of America National Trust and Savings Association, a national banking association, as special administrator of the said estate of the said Martina Maxine Dole, deceased, concerning the aforesaid cause of action then existing in favor of the heirs at law of the said Martina Maxine Dole, deceased, against the said defendant, John S. Sinai, as aforesaid.

XXVII.

That plaintiffs are informed and believe and upon such information and belief allege that subsequent to the entry of the said order by the said Superior Court of the State of California, in and for the

County of San Mateo, in the matter of the said estate of Martina Maxine Dole, deceased, authorizing and approving said compromise by and between said defendant, John S. Sinai, and the said defendant, Bank of America National Trust and Savings Association, a national banking association, as special administrator of the estate of Martina Maxine Dole, deceased, as aforesaid, to-wit, on the 11th day of May, 1936, the said defendant Bank of America National Trust and Savings Association, a national banking association, as special administrator of the said estate of Martina Maxine Dole, deceased, did purport to execute a complete release and discharge in favor of the said defendant, John S. Sinai, concerning all claims and alleged indebtedness due by said last named defendant to the heirs at law of the said Martina Maxine Dole, deceased, as aforesaid.

XXVIII.

That plaintiffs are informed and believe and upon such [23] information and belief allege that subsequent to the aforesaid agreement entered into by and between the defendant, John S. Sinai, and the defendant Bank of America National Trust and Savings Association, a national banking association, special administrator of the estate of Martina Maxine Dole, deceased, compromising the aforesaid indebtedness, the said defendant, Arthur A. Dole, under facts and circumstances that will hereinafter be more particularly alleged, signed and executed a release purporting to release the said defendant John S. Sinai from any and all obligations owing

to the said defendant, Arthur A. Dole, as an heir at law of the said Martina Maxine Dole, deceased, in and about the matters hereinbefore more specifically alleged; that said release, however, so executed by the said defendant Arthur A. Dole to the said defendant John S. Sinai did not nor did the same purport to release any cause of action existing in favor of the plaintiffs against the said defendant, John S. Sinai, or any or all of any remaining defendants by reason of the matters hereinbefore more specifically set forth and alleged.

XXIX.

That thereafter, the said defendant John S. Sinai did pay to the said defendant Bank of America National Trust and Savings Association, a national banking association, special administrator of the estate of Martina Maxine Dole, deceased, the sum of Five thousand (\$5000.00) Dollars; that thereafter said superior Court of the said State of California, in and for the county of San Mateo, in the matter of the estate of Martina Maxine Dole, deceased, did enter a decree of final distribution as hereinbefore more specifically alleged and referred to and by said decree did ratify and approve the aforesaid compromise between the said defendant, John S. [24] Sinai and the said defendant, Bank of America National Trust and Savings Association, a national banking association, as special administrator of the said estate of Martina Maxine Dole, deceased, as aforesaid; that under and by vir-

tue of the said decree of final distribution the said defendant C. F. Humphrey and Luther Elkins did receive the sum of Twenty five hundred (\$2500.00) Dollars under and by virtue of the contract so entered into by and between the said last named defendants and the said defendant, Arthur A. Dole, employing the said defendants, C. F. Humphrey and Luther Elkins as the attorneys for the heirs at law of the said Martina Maxine Dole, deceased, as aforesaid, and the said defendants, C. F. Humphrey and Luther Elkins did further receive a share in the remaining sum of Twenty five hundred (\$2500.00) Dollars to the extent that said sum of Twenty five hundred (\$2500.00) Dollars increased the value of the said estate of Martina Maxine Dole, deceased, pursuant to and by virtue of certain laws and statutes of the State of California providing for the payment of attorneys fees upon a fixed valuation of the estate of deceased persons.

XXX.

That plaintiffs are informed and believe and upon such information and belief allege that the defendant, John S. Sinai, and other defendants named in this proceeding and cause of action will claim some rights under said order of the Superior Court of the State of California, in and for the County of San Mateo, authorizing the aforesaid compromise between the said defendant, John S. Sinai, and the said defendant Bank of America National Trust and Savings Association, a national banking asso-

ciation, as aforesaid, the release executed by the said defendant Bank of America [25] National Trust and Savings Association, a national banking association, to the said defendant John S. Sinai, releasing the said last named defendant from all obligations owing to the said heirs at law of the said Martina Maxine Dole, deceased, as aforesaid, the release executed by the said defendant Arthur A. Dole to the said defendant John S. Sinai, releasing the aforesaid defendant from said indebtedness, as aforesaid, and the final decree of distribution of the said Superior Court of the State of California, in and for the County of San Mateo, in the matter of the said estate of Martina Maxine Dole, deceased, as aforesaid.

XXXI.

That plaintiffs are informed and believe and upon such information and belief allege that the aforesaid order of said Superior Court of the State of California, in and for said County of San Mateo, in the matter of the estate of Martina Maxine Dole, deceased, approving and authorizing the said suggested and requested compromise of the said alleged indebtedness due to the said estate of Martina Maxine Dole, deceased, and the said heirs at law of the said last named deceased person, by the said defendant, Bank of America National Trust and Savings Association, a national banking association, special administrator of the said estate of Martina Maxine Dole, deceased, with the said defendant John S. Sinai, as aforesaid, the aforesaid

release and discharge made and executed by the said defendant, Bank of America National Trust and Savings Association, a national banking association, special administrator of the said estate of Martina Maxine Dole, deceased, in favor of the said defendant John S. Sinai, as aforesaid, the said release and discharge made and executed by the said defendant, Arthur A. Dole, to the said defendant John S. Sinai, [26] as aforesaid, and the decree of final distribution of the Superior Court of the State of California in and for the County of San Mateo, in the matter of the estate of the said Martina Maxine Dole, deceased, sanctioning and approving the aforesaid compromise between the said defendant, Bank of America National Trust and Savings Association, a national banking association, special administrator of the estate of Martina Maxine Dole, deceased, and the said defendant, John S. Sinai, as aforesaid, were and each of them was procured by fraud of the various defendants herein acting in concert and motivated by the common design of procuring the aforesaid compromise, said fraud being extrinsic in its nature and character, to-wit:

(a) That plaintiffs are informed and believe and upon such information and belief allege that at the time that the petition was filed by the defendant, Bank of America National Trust and Savings Association, a national banking association, for leave to settle and compromise the aforesaid alleged indebtedness owing by the defendant, John S. Sinai, to the said estate of Martina Maxine Dole, deceased,

and to the heirs at law of Martina Maxine Dole, deceased, as aforesaid, and for some time prior thereto, and during all of the times thereafter as in this complaint mentioned, to and including the date of the entry of the final decree of distribution in the matter of the estate of the said Martina Maxine Dole, deceased, as aforesaid, the First National Bank of Nevada, formerly the First National Bank of Reno, was a national banking institution organized and existing under and by virtue of the laws of the United States of America, and that during all of said times the said defendant, John S. Sinai, was an officer and director of said last mentioned [27] institution and during all of said times the said defendants, John S. Sinai and Samuel Platt were duly licensed practicing attorneys at law under the laws of the State of Nevada, and as such were attorneys for the said First National Bank of Nevada, formerly the first National Bank of Reno, a national banking institution, and that during all of said times the said First National Bank of Nevada, formerly the First National Bank of Reno, was owned, managed, operated and controlled by the Trans-america Corporation, a corporation, which said last named corporation also during all of said time owned, managed, operated and controlled the defendant, Bank of America National Trust and Savings Association, a national banking association; that by reason of the aforesaid facts there existed during all of said times a fiduciary relationship between the said defendants Samuel Platt and John

S. Sinai, and the said defendant Bank of America National Trust and Savings Association, a national banking association; that said relationship actuated and motivated the said defendant, Bank of America National Trust and Savings Association, a national banking association, as special administrator of the estate of Martina Maxine Dole, deceased, to sanction and approve and likewise petition and request the said Superior Court of the State of California, in and for the County of San Mateo, in the matter of the said estate of the said Martina Maxine Dole, deceased, to approve and authorize the aforesaid compromise of said alleged indebtedness and likewise motivated and actuated the said defendant, Bank of America National Trust and Savings Association, a national banking association, to execute the aforesaid release in favor of the said defendant John S. Sinai releasing and discharging the said last named defendant for all and any [28] of the aforesaid alleged indebtedness. That all of the aforesaid information was withheld from the Superior Court of the State of California, in and for the County of San Mateo, in the matter of the estate of Martina Maxine Dole, deceased, by the said defendants C. F. Humphrey, Luther Elkins and the Bank of America National Trust & Savings Association, a national banking association, special administrator of the said estate of Martina Maxine Dole, deceased, at the time that the said petition for leave to compromise said alleged indebtedness was heard and determined by the said last mentioned Court

and at the time that the said Court made and caused to be entered a decree of final distribution which contained an order approving and settling the account of the said special administrator and approving the aforesaid compromise and release of the said indebtedness.

(b) That plaintiffs are informed and believe and upon such information and belief allege that shortly before the time set for the hearing of the said petition for leave to compromise the aforesaid indebtedness alleged to be owing by the defendant John S. Sinai, as aforesaid, the said defendant Arthur A. Dole consulted with the said defendants C. F. Humphreys and Luther Elkins concerning the opposing the granting of the said petition to compromise the aforesaid indebtedness. That the said defendant Arthur A. Dole informed the said defendants C. F. Humphreys and Luther Elkins that he the said defendant Arthur A. Dole was opposed to the said compromise for the reasons hereinafter set forth and that he did not consider said compromise for the best interests of either the said estate of Martina Maxine Dole, deceased, or the heirs of the said last named deceased person; that the said defendant Arthur A. Dole was informed by the said defendants C. F. Humphreys and Luther Elkins that they agreed [29] with him that the said contemplated compromise was not for the best interests of the said estate of the heirs-at-law of said Martina Maxine Dole, but that it was useless for him or anyone else to oppose the petition of said Bank

of America National Trust & Savings Association, a national banking corporation, the special administrator of the estate of Martina Maxine Dole, as aforesaid, as the Court would not listen seriously to any of the heirs of the last named deceased in opposing the aforesaid petition to compromise but on the contrary would grant the petition to compromise said indebtedness irrespective of any opposition on the part of any of the aforesaid heirs; that the said defendants C. F. Humphrey and Luther Elkins further advised the defendant Arthur A. Dole that in their opinion the proposed compromise of the said indebtedness was illegal and would not be binding on the heirs of the said Martina Maxine Dole, deceased, and in any event would not release any defendant other than the defendant John S. Sinai; that the said defendants C. F. Humphrey and Luther Elkins did further counsel and advise the said defendant Arthur A. Dole not to appear before the said Court at the hearing of the said petition to compromise the alleged indebtedness as he would accomplish nothing by so doing and that they the defendants C. F. Humphrey and Luther Elkins would represent the heirs of the said Martina Maxine Dole, deceased, that subsequent to the aforesaid conversation between the defendants C. F. Humphrey and Luther Elkins and the defendant Arthur A. Dole as aforesaid the said defendants C. F. Humphrey and Luther Elkins did prepare and furnish to the defendant Arthur A. Dole a written opinion to the effect that the said compromise was

not binding on the heirs at law of the said Martina Maxine Dole, deceased, as far as the defendant Samuel Platt was concerned; that the defendant Arthur A. Dole [30] relied upon the aforesaid advice and statements of the defendants C. F. Humphrey and Luther Elkins, as aforesaid, and as a result thereof did not appear before the said Court either at the hearing of the petition to compromise the said indebtedness or at the time of the hearing and determination of the petition for final distribution as aforesaid. That for the reasons hereinbefore alleged the said defendant Arthur A. Dole did at the suggestion and upon the advice of the said defendants C. F. Humphrey and Luther Elkins sign and execute the aforesaid release, releasing and discharging the said defendant John S. Sinai from all claims concerning the said indebtedness as aforesaid.

(c) That plaintiffs are informed and believe and upon such information and belief allege that the defendants C. F. Humphrey and Luther Elkins and the said defendant Bank of America National Trust & Savings Association, a national banking corporation, acting through its officers, agents and employees, appeared both at the hearing of the petition for leave to compromise the aforesaid indebtedness and the petition for final distribution, as aforesaid, and that at both of the aforesaid hearings failed and neglected to call to the attention of the Court the true facts and circumstances of the transaction had by the said Martina Maxine Dole during her lifetime and the said defendants Samuel Platt

and John S. Sinai, as aforesaid, the fact that there in reality existed no indebtedness due from the last named defendants to the estate of Martina Maxine Dole, deceased, or to the heirs of said deceased person, except such as was incidental to the said transaction, but on the contrary that by reason of the said transaction had by the said Martina Maxine Dole during her lifetime with the defendants Samuel Platt and John S. Sinai and the relationship existing between said last named persons as aforesaid, the said [31] Martina Maxine Dole died possessed of valuable rights in real property which rights by reason of the death of the said Martina Maxine Dole had become vested in the heirs at law of the said Martina Maxine Dole; that the defendants C. F. Humphrey and Luther Elkins and the defendant Bank of America National Trust & Savings Association, a national banking corporation, further failed and neglected to explain at either or both of the aforesaid hearings the relationship existing between the said defendants Samuel Platt and John S. Sinai and the defendant Bank of America National Trust & Savings Association, a national banking corporation, as aforesaid, the relationship existing between the defendants C. F. Humphrey and Luther Elkins and the heirs at law of the said Martina Maxine Dole, deceased, as aforesaid, the reasons that actuated the said defendant Bank of America National Trust & Savings Association, a national banking corporation, in effecting said compromise and in petitioning for leave to

compromise said alleged existing indebtedness, as aforesaid, the fact that the defendant Arthur A. Dole had been counseled and advised not to appear before the said Court by the defendants C. F. Humphrey and Luther Elkins, to oppose the granting of the said petition to compromise the said alleged indebtedness as aforesaid, the fact that the said defendants C. F. Humphrey and Luther Elkins had agreed to represent the heirs at law of the said Martina Maxine Dole at both of the aforesaid hearings, as aforesaid, and all of the other facts and circumstances as hereinbefore alleged.

(d) That the said defendants C. F. Humphrey and Luther Elkins and the said defendant Bank of America National Trust & Savings Association, a national banking corporation, appeared before the said Superior Court of the State of California, in and for the said County of San Mateo in the matter of the estate [32] of Martina Maxine Dole, deceased, at both the aforesaid hearings upon the said petitions for leave to compromise said alleged indebtedness and for final distribution and represented to said Court that it was for the best interests of the estate of Martina Maxine Dole, deceased, and the heirs at law of the said last named deceased person, that the said alleged indebtedness be compromised and that the said Court approve the same. That said representations to the said Court by said last named defendants, that said compromise was for the best interests of the heirs at law of said Martina Maxine Dole were wilfully and fraudulently made

by said defendants for the purpose of misleading said Court and obtaining from said Court the requested authorization to compromise said alleged indebtedness. That said real property belonging to said estate of Martina Maxine Dole, deceased, and the said heirs of said last named deceased person, then in the possession of said defendants, Samuel Platt and John S. Sinai as aforesaid, was worth many times more than the amount procured by the said defendant Bank of America National Trust & Savings Association, a banking association, in settlement of the alleged indebtedness, all of which the said defendant Bank of America National Trust & Savings Association, a banking association, and the said defendant John S. Sinai, well knew, and that said petition for compromise was filed and said representations made to said Court for the sole and only purpose of procuring a release in favor of said defendant, John S. Sinai, for the said indebtedness in and about the matters referred to in this complaint. That in addition to the making of the aforesaid representations the said defendant Bank of America National Trust & Savings Association, a banking association, and the said defendant John S. Sinai, fraudulently withheld and concealed from said Court at the time of procuring of said order and at [33] the time of the entering of said decree settling said account and ordering final distribution, many facts material and pertinent to the question of whether or no said compromise should be effected, to-wit that said last named defendants did not in-

form said Court of the true nature of said indebtedness, of the value of said indebtedness, or of the property then held by said defendant John S. Sinai belonging to the said estate of Martina Maxine Dole, deceased and the said heirs of said last named persons, as aforesaid, all of which was then well known to the said defendants, and that said withholding and concealment was made by said last named defendants for the sole and only purpose of procuring said orders approving said compromise and the said decree settling said account of said administrator and decreeing distribution, as aforesaid.

(e) That the said defendants C. F. Humphrey and Luther Elkins, as attorneys for the said defendant Bank of America National Trust & Savings Association, a national banking association, as special administrator of the Estate of Martina Maxine Dole, deceased, and the said defendant Bank of America National Trust & Savings Association, a national banking association, as special administrator of the Estate of Martina Maxine Dole, deceased, failed to inventory in the said estate of the said Martina Maxine Dole, deceased, either the said real property acquired by the said Martina Maxine Dole, deceased, during her lifetime by reason of the transaction had by her with the defendants Samuel Platt and John S. Sinai, as aforesaid, or the actual amount of the alleged indebtedness due from the last named defendants to the said estate of the said Martina Maxine Dole, deceased and to the heirs at law of the said last named deceased person.

XXXIII.

That all of the facts and circumstances set forth and [34] alleged in paragraph XXXII of this complaint had a material bearing on the question and issue as to whether or no the proposed and suggested compromise of the alleged indebtedness due from the said defendant John S. Sinai to the said estate of Martina Maxine Dole and to the heirs of the said last named deceased person, was for the best interests of the said estate and of the said heirs at law of the said Martina Maxine Dole, deceased.

XXXIV.

That none of the facts alleged in this complaint with respect to the conduct and actions of the defendant Bank of America National Trust & Savings Association, a banking association, and the said defendant John S. Sinai with reference to the procurement of said order by the said Superior Court of the State of California, in and for said County of San Mateo, in the matter of the said estate of Martina Maxine Dole, deceased, authorizing the said compromise by the said administrator of the said last named estate and the said John S. Sinai, as aforesaid, and of the order and decree settling the said account and decree of distribution made by said last named Court, as aforesaid, were known to said plaintiffs at the time of the filing of the above entitled action, and that said plaintiffs were placed upon investigation of said facts and circumstances by reason of certain recitals contained in the answer

of the said defendant, John S. Sinai, to plaintiffs' complaint on file herein, including the exhibits attached thereto and that as a result of said investigation all of the aforesaid facts together with the other facts and circumstances alleged in paragraph XXXII of this complaint, were discovered by the plaintiffs approximately on or about the 28th day of January, 1939, about the time that the said answer was filed as aforesaid. [35]

XXXV.

That the defendants Harold P. Davis and Arthur A. Dole are joined as party defendants for the reason that said parties should be party plaintiffs but that the consent of said defendants Harold P. Davis, and Arthur A. Dole could not be obtained to join said last named parties as parties plaintiff; that by reason of the provisions of Section 382 of the Code of Civil Procedure of the State of California, for the foregoing reason said defendants Harold P. Davis, and Arthur A. Dole are named as party defendants in lieu of being named party plaintiffs.

XXXVI.

That by reason of the premises the said heirs at law of Martina Maxine Dole have been damaged in the sum of (\$3,000,000) Three Million Dollars, no part of which has been paid, of which said sum the plaintiffs as heirs at law of the said Martina Maxine Dole, deceased, are entitled to (\$1,000,000) One Million Dollars.

Wherefore, plaintiffs pray that judgment be rendered by this Honorable Court in the sum of (\$3,000,000) Three Million Dollars in favor of the heirs at law of the said Martina Maxine Dole, deceased, against said defendants and that said Court should decree and adjudicate that the plaintiffs are entitled as heirs at law of the said Martina Maxine Dole, deceased to the sum of (\$1,000,000) One Million Dollars of the amount of the said judgment as prayed; that the said defendants be by order judgment and decree of this Honorable Court, required to account to the said plaintiffs and to the other heirs at law of the said Martina Maxine Dole, deceased, for all money and property now in their possession, formerly belonging to the said Martina Maxine Dole, now deceased, and that judgment be rendered accordingly, that this Honorable [36] Court order, adjudge and decree that the order of the Superior Court of the State of California in and for the County of San Mateo, in the matter of the estate of Martina Maxine Dole, deceased, authorizing the compromise of the said alleged indebtedness, the order settling the account of the defendant Bank of America National Trust and Savings Association, a National Banking Association included in the final decree of distribution by said last mentioned Court in said last mentioned estate, the agreement executed by the defendant Arthur A. Dole, releasing and discharging the defendant John S. Sinai from all claims under said indebtedness, the agreement executed by the defend-

ant Bank of America National Trust & Savings Association, a National Banking Association, releasing and discharging the defendant John S. Sinai from all claims by reason of the said alleged indebtedness, be and each of said be declared void by reason of having been obtained by fraud under the facts and circumstances as in this complaint alleged for the course of this suit, and for such other further equitable and other relief as may be proper in the premises.

RUSSELL P. TYLER,

MARSHALL B. WOODWORTH,

Attorneys for Plaintiffs.

[Endorsed]: Filed Nov. 16, 1940. [37]

[Title of District Court and Cause.]

MOTION TO DISMISS

To the plaintiffs above named and to Messrs. Russell P. Tyler and Marshall B. Woodworth, their attorneys:

You and each of you will please take notice that on Monday, the 27th day of January, 1941, at the hour of 10 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, in the courtroom of Honorable Michael J. Roche, Judge of the above entitled court, in the Post Office Building, 7th & Mission Streets, San Francisco, California, Bank of America National Trust and Savings Association, one of the defendants in the above-entitled action,

will move the above entitled court to dismiss the said action so far as it is concerned.

The said motion will be made upon this notice of motion and upon all the records and papers on file in the said action and will be made upon the ground that the second amended complaint on file in the said action fails to state a claim upon which relief can be granted as against the said Bank for the following reasons:

First, that the order of the Superior Court of the State of California in and for the County of San Mateo, referred to in said complaint, authorizing the Bank as administrator of the estate of Martina Maxine Dole, deceased, to compromise the claim of the said estate against John S. Sinai, one of the defendants in the said action, is *res judicata* in favor of the said Bank so far as any claims the said plaintiffs may be asserting by the said complaint against the said Bank are concerned and bars the said action as against the said Bank.

Second, that the decree of final distribution [38] referred to in the said complaint is *res judicata* in favor of the said Bank so far as any claims the said plaintiffs may be asserting by the said complaint against the said Bank are concerned and bars the said action as against the said Bank.

Third, that the said complaint shows upon its face that any claims the said plaintiffs may be asserting by the said complaint against the said Bank are barred by laches.

Fourth, that the said complaint shows upon its face that any claims the said plaintiffs may be asserting by the said complaint against the said Bank are barred by subdivision 4 of Section 338 of the Code of Civil Procedure of the State of California.

Fifth, that the said complaint shows upon its face that any claims the said plaintiffs may be asserting by the said complaint against the said Bank are barred by section 343 of the Code of Civil Procedure of the State of California.

Dated: January 16th, 1941.

KEYES & ERSKINE,
By MORSE ERSKINE,
Attorneys for Bank of Amer-
ica N. T. & S. A. [39]

[Title of District Court and Cause.]

POINTS AND AUTHORITIES ON BANK OF
AMERICA N. T. & S. A. MOTION TO DIS-
MISS.

After the plaintiffs had filed their amended complaint, defendant Bank of America National Trust & Savings Association filed a notice of motion to dismiss said action. Defendant Bank of America filed briefs in support of said motion to dismiss.

The motion to dismiss which will be made on January 27, 1941, will be made upon the said briefs

hereinabove referred to, and upon all the records and papers on file in said action.

KEYES & ERSKINE

Attorneys for defendant Bank
of America N. T. & S. A.

(Admission of Service)

[Endorsed]: Filed Jan. 16, 1941. [40]

[Title of District Court and Cause.]

ORDER

On motion of defendant Bank of America N. T. & S. A. for dismissal of plaintiffs' second amended complaint, it is ordered that the motion be granted, with leave to plaintiffs of twenty days within which to amend.

Dated: May 28, 1941.

MICHAEL J. ROCHE,

United States District Judge.

[Endorsed]: Filed May 28, 1941. [41]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Now come Virginia Davis Hartman and Margaret Davis Richardson, the plaintiffs in the above-entitled suit, and hereby appeal from the final order and judgment of the above-entitled Court, made

and entered on the 28th day of May, 1941, sustaining the Motion to Dismiss of the defendant, Bank of America National Trust & Savings Association, to plaintiffs' second amended complaint; that said defendant, Bank of America National Trust & Savings Association, is the appellee; that said appeal is being taken to the United States Circuit Court of Appeals for the Ninth Circuit.

San Francisco, Calif.,
August 25, 1941.

RUSSELL P. TYLER,
MARSHALL B. WOODWORTH,
Attorneys for Plaintiffs and
Appellants.

Receipt of Service.

[Endorsed]: Filed Aug. 26, 1941. [42]

[Title of District Court and Cause.]

COST BOND ON APPEAL

The premium charge on this bond is \$10.00 per annum.

Know all Men by these Presents, That we, Virginia Davis Hartman and Margaret Davis Richardson, as principals, and United States Fidelity and Guaranty Company, as sureties, are held and firmly bound unto Bank of America National Trust & Savings Association, in the full and just sum of Two hundred and fifty (\$250.00) dollars, to

be paid to the said Bank of America National Trust & Savings Association, its certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severately by these presents. Sealed with our seals and dated this 25th day of August in the year of our Lord One Thousand Nine Hundred and Forty-One.

Whereas, lately at a District Court of the United States, for the Northern District of California, Southern Division, in a suit depending in said Court, between Virginia Davis Hartman and Margaret Davis Richardson, plaintiffs and appellants, and Bank of America National Trust & Savings Association, defendant and appellee, an order and judgment sustaining the demurrer of Bank of America National Trust & Savings Association, defendant and appellee, was rendered against the said Virginia Davis Hartman and Margaret Davis Richardson, plaintiffs and appellants, and the said Virginia Davis Hartman and Margaret Davis Richardson, plaintiffs and appellants, having filed a Notice of Appeal, as required by law to reverse the order and judgment in the aforesaid suit, to the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California.

Now, the condition of the above obligation is such, That if the said Virginia Davis Hartman and Margaret Davis Richardson, plaintiffs and appellants, shall prosecute their appeal to effect, and answer all

damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

This recognizance shall be deemed and construed to contain the "express Agreement" for summary judgment, and execution thereon, pursuant to the laws, rules and statutes in such instances made and provided for and/or pursuant to Rule 34 of the said District Court.

[Seal]

UNITED STATES FIDELITY
AND GUARANTY COMPANY
By ANN MORRISON,
Attorney-in-Fact.

State of California,
City and County of San Francisco—ss.

On this 25th day of August in the year one thousand nine hundred and forty-one before me George Gillen, a Notary Public in and for the City and County of San Francisco, personally appeared Ann Morrison known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the United States Fidelity and Guaranty Company, and acknowledged to me that she subscribed the name of the United States Fidelity and Guaranty Company thereto as surety and her own name as Attorney-in-fact.

GEORGE GILLEN,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires January 1, 1943.

[Endorsed]: Filed Aug. 26, 1941. [43]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH AP-
PELLANTS INTEND TO RELY ON AP-
PEAL.

(Assignments of Error)

Now come the appellants and serve and file their statement of the points on which they intend to rely on the appeal as follows:

I.

That the Court erred in sustaining the Motion to Dismiss of the defendant and appellee, Bank of America National Trust & Savings Association, to plaintiffs and appellants second amended complaint.

II.

That the Court erred in holding and deciding that the plaintiffs and appellants second amended complaint did not state a cause of action as against defendant and appellee, Bank of America National [44] Trust & Savings Association.

Wherefore the appellants pray that the order and judgment of the above-entitled Court made and entered on the 28th day of May, 1941, sustaining the demurrer of the defendant and appellee, Bank of America National Trust & Savings Association, to plaintiffs and appellants second amended complaint be reversed.

San Francisco, Calif.,

August 25, 1941.

RUSSELL P. TYLER

MARSHALL B. WOODWORTH

Attorneys for Appellant.

Receipt of the within Statement of Points On Which Appellant Intend to Rely on Appeal is hereby acknowledged by copy this 26th day of August, 1941.

KEYES & ERSKINE,
Attorneys for Appellee, Bank of America National
Trust & Savings Association.

Receipt of Service.

[Endorsed]: Filed Aug. 26, 1941. [45]

[Title of District Court and Cause.]

REQUEST FOR RECORD ON APPEAL.

To the Clerk of the above-entitled Court and to the Bank of America National Trust & Savings Association, defendant and appellee, and to Messrs. Keyes & Erskine, attorneys for said defendant and appellee, San Francisco, California:

You, and each of you, are hereby notified that the Clerk of the above-entitled Court has been requested by the plaintiffs and appellants to prepare under his hand and the seal of said Court and transmit to the Appellate Court a true copy of the matters designated by the plaintiffs and appellants as follows: (1) Second Amended Complaint; (2) Motion to Dismiss Second Amended Complaint [46] (3) Order of Court made and entered on May 28, 1941,

sustaining the Motion to Dismiss of defendant and appellee, Bank of America National Trust & Savings Association, to plaintiffs and appellants Second Amended Complaint; (4) Notice of Appeal; (5) Statement of Points on which Appellants Intend to Rely on Appeal; (6) Request for Record on Appeal; (7) Bond for Costs.

San Francisco, Calif., August 25, 1941.

RUSSELL P. TYLER,
MARSHALL B. WOODWORTH,
Attorneys for Plaintiffs and
Appellants.

Receipt of the within Request for Record on Appeal is hereby acknowledged by copy this 26th day of August, 1941.

KEYES & ERSKINE,
Attorneys for Defendant and Appellee, Bank of
America National Trust & Savings Association.

Receipt of Service.

[Endorsed]: Filed Aug. 26, 1941. [47]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 47 pages, numbered from 1 to 47, inclusive, contain

a full, true, and correct transcript of the records and proceedings in the case of Virginia Davis Hartman, et al., Plaintiffs, vs. Harold F. Davis, et al., Defendants. No. 21021-R., as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Seven-dollars & thirty-cents (\$7.30) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, at San Francisco, California, this 25th day of September, A. D. 1941.

[Seal]

WALTER B. MALING,

Clerk.

WM. J. CROSBY,

Deputy Clerk.

[Endorsed]: No. 9945. United States Circuit Court of Appeals for the Ninth Circuit. Virginia Davis Hartman and Margaret Davis Richardson, Appellant, vs. Bank of America National Trust & Savings Association, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed October 6, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit. [48]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 9945

VIRGINIA DAVIS HARTMAN and MAR-
GARET DAVIS RICHARDSON,

Appellants,

vs.

BANK OF AMERICA NATIONAL TRUST &
SAVINGS ASSOCIATION et al.,

Appellee.

DESIGNATION OF RECORD TO BE PRINTED
and

STATEMENT OF POINTS RELIED UPON

To Clerk of Circuit Court of Appeals and Messrs.

Keyes & Erskine, Attorneys for Appellee, San
Francisco, Calif.:

Now come the appellants and designate, pursuant to the rules of the above-entitled Court, the record to be printed on the appeal and hereby request, direct and designate that all of the transcript on appeal as certified be printed; and further state that they will rely upon each, every and all of the statements of points and assignments of error included and set forth in the certified transcript on appeal.

Dated: October 10, 1941, San Francisco, Calif.

RUSSELL P. TYLER,

MARSHALL B. WOODWORTH,

Attorneys for Appellants.

Receipt of the within Designation of Record to be printed and Statement of Points Relied Upon is hereby acknowledged by copy this 9th day of October, 1941.

KEYES & ERSKINE,

Attorneys for Appellee, Bank of America National Trust & Savings Association.

[Endorsed]: Filed Oct. 10, 1941. Paul P. O'Brien, Clerk.

